

1 SENATE BILL 313

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

11 RELATING TO PUBLIC EDUCATION; AMENDING THE PUBLIC SCHOOL CODE
12 TO CLARIFY THE USE OF SCHOOL DISTRICT FACILITIES FOR CHARTER
13 SCHOOLS AND ELIGIBILITY FOR PUBLIC SCHOOL CAPITAL OUTLAY
14 COUNCIL GRANTS PAID FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND
15 FOR LEASE PAYMENTS; MAKING CLARIFYING CHANGES TO THE PUBLIC
16 SCHOOL LEASE PURCHASE ACT REGARDING LEASE PURCHASE AGREEMENTS,
17 INCLUDING ALLOWABLE INTEREST RATES AND PAYMENTS, AND CERTAIN
18 AGREEMENT COMPONENTS REQUIRING PUBLIC EDUCATION DEPARTMENT
19 APPROVAL.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 22-8B-4 NMSA 1978 (being Laws 1999,
23 Chapter 281, Section 4, as amended) is amended to read:

24 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
25 OPERATION.--

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1 A. A charter school shall be subject to all federal
2 and state laws and constitutional provisions prohibiting
3 discrimination on the basis of disability, physical or mental
4 handicap, serious medical condition, race, creed, color, sex,
5 gender identity, sexual orientation, spousal affiliation,
6 national origin, religion, ancestry or need for special
7 education services.

8 B. A charter school shall be governed by a
9 governing body in the manner set forth in the charter contract;
10 provided that a governing body shall have at least five
11 members; and provided further that no member of a governing
12 body for a charter school that is initially approved on or
13 after July 1, 2005 or whose charter is renewed on or after July
14 1, 2005 shall serve on the governing body of another charter
15 school. No member of a local school board shall be a member of
16 a governing body for a charter school or employed in any
17 capacity by a locally chartered charter school located within
18 the local school board's school district during the term of
19 office for which the member was elected or appointed.

20 C. A charter school shall be responsible for:
21 (1) its own operation, including preparation
22 of a budget, subject to audits pursuant to the Audit Act; and
23 (2) contracting for services and personnel
24 matters.

25 D. A charter school may contract with a school

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1 district, a university or college, the state, another political
2 subdivision of the state, the federal government or one of its
3 agencies, a tribal government or any other third party for the
4 use of a facility, its operation and maintenance and the
5 provision of any service or activity that the charter school is
6 required to perform in order to carry out the educational
7 program described in its charter contract. Facilities used by
8 a charter school shall meet the standards required pursuant to
9 Section 22-8B-4.2 NMSA 1978.

10 E. A conversion school chartered before July 1,
11 2007 may choose to continue using the school district
12 facilities and equipment it had been using prior to conversion,
13 subject to the provisions of Subsection F of this section.

14 F. The school district in which a charter school is
15 geographically located shall provide a charter school with
16 available facilities for the school's operations unless the
17 facilities are currently used for other educational purposes,
18 and a charter school shall accept an offer of an available
19 facility made by a school district; provided that, if a charter
20 school can demonstrate that the facilities being offered do not
21 meet the educational programming needs of the school, a charter
22 school does not have to accept available facilities offered by
23 a school district. An agreement for the use of school district
24 facilities by a charter school may provide for reasonable lease
25 payments; provided that the payments do not exceed the sum of

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1 the lease reimbursement rate provided in Subparagraph (b) of
2 Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus
3 any reimbursement for actual direct costs incurred by the
4 school district in providing the facilities; and provided
5 further that any lease payments received by a school district
6 may be retained by the school district and shall not be
7 considered to be cash balances in any calculation pursuant to
8 Section 22-8-41 NMSA 1978. The available facilities provided
9 by a school district to a charter school shall meet all
10 occupancy standards as specified by the public school capital
11 outlay council. As used in this subsection, "other educational
12 purposes" includes school-based health clinics, daycare centers
13 [~~teacher training centers, school district administration~~
14 ~~functions and other ancillary services related to a school~~
15 ~~district's functions and operations~~] and pre-kindergarten
16 programs.

17 G. A locally chartered charter school may pay the
18 costs of operation and maintenance of its facilities or may
19 contract with the school district to provide facility operation
20 and maintenance services.

21 H. Locally chartered charter school facilities are
22 eligible for state and local capital outlay funds and shall be
23 included in the school district's five-year facilities plan.

24 I. A locally chartered charter school shall
25 negotiate with a school district to provide transportation to

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1 students eligible for transportation under the provisions of
2 the Public School Code. The school district, in conjunction
3 with the charter school, may establish a limit for student
4 transportation to and from the charter school site not to
5 extend beyond the school district boundary.

6 J. A charter school shall be a nonsectarian,
7 nonreligious and non-home-based public school.

8 K. Except as otherwise provided in the Public
9 School Code, a charter school shall not charge tuition or have
10 admission requirements.

11 L. With the approval of the chartering authority, a
12 single charter school may maintain separate facilities at two
13 or more locations within the same school district; but, for
14 purposes of calculating program units pursuant to the Public
15 School Finance Act, the separate facilities shall be treated
16 together as one school.

17 M. A charter school shall be subject to the
18 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
19 Accountability Act.

20 N. Within constitutional and statutory limits, a
21 charter school may acquire and dispose of property; provided
22 that, upon termination of the charter, all assets of the
23 locally chartered charter school shall revert to the local
24 school board and all assets of the state-chartered charter
25 school shall revert to the state, except that, if all or any

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1 portion of a state-chartered charter school facility is
2 financed with the proceeds of general obligation bonds issued
3 by a local school board, the facility shall revert to the local
4 school board.

5 O. The governing body of a charter school may
6 accept or reject any charitable gift, grant, devise or bequest;
7 provided that no such gift, grant, devise or bequest shall be
8 accepted if subject to any condition contrary to law or to the
9 terms of the charter. The particular gift, grant, devise or
10 bequest shall be considered an asset of the charter school to
11 which it is given.

12 P. The governing body may contract and sue and be
13 sued. A local school board shall not be liable for any acts or
14 omissions of the charter school.

15 Q. A charter school shall comply with all state and
16 federal health and safety requirements applicable to public
17 schools, including those health and safety codes relating to
18 educational building occupancy.

19 R. A charter school is a public school that may
20 contract with a school district or other party for provision of
21 financial management, food services, transportation, facilities,
22 education-related services or other services. The governing
23 body shall not contract with a for-profit entity for the
24 management of the charter school.

25 S. To enable state-chartered charter schools to

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1 submit required data to the department, an accountability data
2 system shall be maintained by the department.

3 T. A charter school shall comply with all
4 applicable state and federal laws and rules related to
5 providing special education services. Charter school students
6 with disabilities and their parents retain all rights under the
7 federal Individuals with Disabilities Education Act and its
8 implementing state and federal rules. Each charter school is
9 responsible for identifying, evaluating and offering a free
10 appropriate public education to all eligible children who are
11 accepted for enrollment in that charter school. The state-
12 chartered charter school, as a local educational agency, shall
13 assume responsibility for determining students' needs for
14 special education and related services. The division may
15 promulgate rules to implement the requirements of this
16 subsection."

17 SECTION 2. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
18 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
19 as amended) is amended to read:

20 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

21 A. The facilities of a charter school that is
22 approved on or after July 1, 2005 and before July 1, 2015 shall
23 meet educational occupancy standards required by applicable New
24 Mexico construction codes.

25 B. The facilities of a charter school whose charter
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1 has been renewed at least once shall be evaluated, prioritized
2 and eligible for grants pursuant to the Public School Capital
3 Outlay Act in the same manner as all other public schools in
4 the state; provided that for charter school facilities in
5 leased facilities, grants may be used to provide additional
6 lease payments for leasehold improvements made by the lessor.

7 C. On or after July 1, 2011, a new charter school
8 shall not open and an existing charter school shall not
9 relocate unless the facilities of the new or relocated charter
10 school, as measured by the New Mexico condition index,
11 [~~receive~~] have a condition rating equal to or better than the
12 average condition for all New Mexico public schools for that
13 year or the charter school [~~demonstrates~~] attains, within
14 eighteen months of occupancy or relocation of the charter [~~the~~
15 ~~way in which the facilities will achieve~~], a rating equal to or
16 better than the average New Mexico condition index.

17 D. On or after July 1, 2015, a chartering authority
18 shall not authorize a new charter school [~~shall not open and~~
19 or renew an existing charter [~~shall not be renewed~~] unless the
20 charter school:

21 (1) is housed in a building that is:

22 (a) owned by the charter school, the
23 school district, the state, an institution of the state,
24 another political subdivision of the state, the federal
25 government or one of its agencies or a tribal government; or

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1 (b) subject to a [~~lease-purchase~~
2 ~~arrangement~~] lease purchase agreement that has been entered
3 into and approved pursuant to the Public School Lease Purchase
4 Act; or

5 (2) if it is not housed in a building
6 described in Paragraph (1) of this subsection, demonstrates
7 that:

8 (a) the facility in which the charter
9 school is housed meets the statewide adequacy standards
10 developed pursuant to the Public School Capital Outlay Act and
11 the owner of the facility is contractually obligated to
12 maintain those standards at no additional cost to the charter
13 school or the state; and

14 (b) as certified by the governing body
15 of a charter school, either: 1) public buildings are not
16 available or adequate for the educational program of the
17 charter school; or 2) the owner of the facility is a nonprofit
18 entity specifically organized for the purpose of providing the
19 facility for the charter school.

20 E. Without the approval of the public school
21 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
22 charter school shall not enter into a [~~lease-purchase~~] lease
23 purchase agreement.

24 F. The public school capital outlay council:

25 (1) shall determine whether facilities of a

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1 charter school meet the educational occupancy standards
2 pursuant to the requirements of Subsection A of this section
3 or the requirements of Subsections B, C and D of this section,
4 as applicable; and

5 (2) upon a determination that specific
6 requirements are not appropriate or reasonable for a charter
7 school, may grant a variance from those requirements for that
8 charter school."

9 SECTION 3. Section 22-24-4 NMSA 1978 (being Laws 1975,
10 Chapter 235, Section 4, as amended) is amended to read:

11 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
12 USE.--

13 A. The "public school capital outlay fund" is
14 created. Balances remaining in the fund at the end of each
15 fiscal year shall not revert.

16 B. Except as provided in Subsections G and I
17 through N of this section, money in the fund may be used only
18 for capital expenditures deemed necessary by the council for an
19 adequate educational program.

20 C. The council may authorize the purchase by the
21 public school facilities authority of portable classrooms to be
22 loaned to school districts to meet a temporary requirement.
23 Payment for these purchases shall be made from the fund. Title
24 to and custody of the portable classrooms shall rest in the
25 public school facilities authority. The council shall

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1 authorize the lending of the portable classrooms to school
2 districts upon request and upon finding that sufficient need
3 exists. Application for use or return of state-owned portable
4 classroom buildings shall be submitted by school districts to
5 the council. Expenses of maintenance of the portable
6 classrooms while in the custody of the public school facilities
7 authority shall be paid from the fund; expenses of maintenance
8 and insurance of the portable classrooms while in the custody
9 of a school district shall be the responsibility of the school
10 district. The council may authorize the permanent disposition
11 of the portable classrooms by the public school facilities
12 authority with prior approval of the state board of finance.

13 D. Applications for assistance from the fund shall
14 be made by school districts to the council in accordance with
15 requirements of the council. Except as provided in Subsection
16 K of this section, the council shall require as a condition of
17 application that a school district have a current five-year
18 facilities plan, which shall include a current preventive
19 maintenance plan to which the school adheres for each public
20 school in the school district.

21 E. The council shall review all requests for
22 assistance from the fund and shall allocate funds only for
23 those capital outlay projects that meet the criteria of the
24 Public School Capital Outlay Act.

25 F. Money in the fund shall be disbursed by warrant

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1 of the department of finance and administration on vouchers
2 signed by the secretary of finance and administration following
3 certification by the council that an application has been
4 approved or an expenditure has been ordered by a court pursuant
5 to Section 22-24-5.4 NMSA 1978. At the discretion of the
6 council, money for a project shall be distributed as follows:

7 (1) up to ten percent of the portion of the
8 project cost funded with distributions from the fund or five
9 percent of the total project cost, whichever is greater, may be
10 paid to the school district before work commences with the
11 balance of the grant award made on a cost-reimbursement basis;
12 or

13 (2) the council may authorize payments
14 directly to the contractor.

15 G. Balances in the fund may be annually
16 appropriated for the core administrative functions of the
17 public school facilities authority pursuant to the Public
18 School Capital Outlay Act, and, in addition, balances in the
19 fund may be expended by the public school facilities authority,
20 upon approval of the council, for project management expenses;
21 provided that:

22 (1) the total annual expenditures from the
23 fund for the core administrative functions pursuant to this
24 subsection shall not exceed five percent of the average annual
25 grant assistance authorized from the fund during the three

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1 previous fiscal years; and

2 (2) any unexpended or unencumbered balance
3 remaining at the end of a fiscal year from the expenditures
4 authorized in this subsection shall revert to the fund.

5 H. The fund may be expended by the council for
6 building system repair, renovation or replacement initiatives
7 with projects to be identified by the council pursuant to
8 Section 22-24-4.6 NMSA 1978; provided that money allocated
9 pursuant to this subsection shall be expended within three
10 years of the allocation.

11 I. The fund may be expended annually by the council
12 for grants to school districts for the purpose of making lease
13 payments for classroom facilities, including facilities leased
14 by charter schools. The grants shall be made upon application
15 by the school districts and pursuant to rules adopted by the
16 council; provided that an application on behalf of a charter
17 school shall be made by the school district, but, if the school
18 district fails to make an application on behalf of a charter
19 school, the charter school may submit its own application. The
20 following criteria shall apply to the grants:

21 (1) a charter school shall use a council-
22 approved, standardized lease for all new leases, amendments and
23 renewals entered into after July 1, 2017;

24 [~~(1)~~] (2) the amount of a grant to a school
25 district shall not exceed:

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1 (a) the actual annual lease payments
2 owed for leasing classroom space for schools, including charter
3 schools, in the school district; or

4 (b) seven hundred dollars (\$700)
5 multiplied by the number of MEM using the leased classroom
6 facilities; provided that [~~in fiscal year 2009 and in each~~
7 ~~subsequent fiscal year, this amount shall be adjusted~~] the
8 council may adjust the amount annually by the percentage change
9 between the penultimate calendar year and the immediately
10 preceding calendar year of the consumer price index for the
11 United States, all items, as published by the United States
12 department of labor;

13 [~~(2)~~] (3) a grant received for the lease
14 payments of a charter school may be used by that charter school
15 as a state match necessary to obtain federal grants pursuant to
16 the federal [~~No Child Left Behind Act of 2001~~] Every Student
17 Succeeds Act;

18 [~~(3)~~] (4) at the end of each fiscal year, any
19 unexpended or unencumbered balance of the appropriation shall
20 revert to the fund;

21 [~~(4)~~] (5) no grant shall be made for lease
22 payments due pursuant to a financing agreement under which the
23 facilities may be purchased for a price that is reduced
24 according to the lease payments made unless:

25 (a) the agreement has been approved

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1 pursuant to the provisions of the Public School Lease Purchase
2 Act; and

3 (b) the facilities are leased by a
4 charter school;

5 ~~[(5)]~~ (6) if the lease payments are made
6 pursuant to a financing agreement under which the facilities
7 may be purchased for a price that is reduced according to the
8 lease payments made, neither a grant nor any provision of the
9 Public School Capital Outlay Act creates a legal obligation for
10 the school district or charter school to continue the lease
11 from year to year or to purchase the facilities nor does it
12 create a legal obligation for the state to make subsequent
13 grants pursuant to the provisions of this subsection; ~~and~~

14 ~~(6)]~~ (7) as used in this subsection:

15 (a) "MEM" means: 1) the average full-
16 time-equivalent enrollment using leased classroom facilities on
17 the ~~[eightieth and one hundred twentieth days]~~ second and third
18 reporting dates of the prior school year; or 2) in the case of
19 an approved charter school that has not commenced classroom
20 instruction, the estimated full-time-equivalent enrollment that
21 will use leased classroom facilities in the first year of
22 instruction, as shown in the approved charter school
23 application; provided that, after the ~~[eightieth day]~~ second
24 reporting date of the school year, the MEM shall be adjusted to
25 reflect the full-time-equivalent enrollment on that date; and

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1 (b) "classroom facilities" or "classroom
2 space" includes the space needed, as determined by the minimum
3 required under the statewide adequacy standards, for the direct
4 administration of school activities; and

5 (8) beginning July 1, 2018, a charter school
6 that receives a D or F school grade pursuant to the A-B-C-D-F
7 Schools Rating Act for the immediately preceding three
8 consecutive school years shall not be eligible for grants
9 pursuant to this section.

10 J. In addition to other authorized expenditures
11 from the fund, up to one percent of the average grant
12 assistance authorized from the fund during the three previous
13 fiscal years may be expended in each fiscal year by the public
14 school facilities authority to pay the state fire marshal, the
15 construction industries division of the regulation and
16 licensing department and local jurisdictions having authority
17 from the state to permit and inspect projects for expenditures
18 made to permit and inspect projects funded in whole or in part
19 under the Public School Capital Outlay Act. The public school
20 facilities authority may enter into contracts with the state
21 fire marshal, the construction industries division or the
22 appropriate local authorities to carry out the provisions of
23 this subsection. Such a contract may provide for initial
24 estimated payments from the fund prior to the expenditures if
25 the contract also provides for additional payments from the

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1 fund if the actual expenditures exceed the initial payments and
2 for repayments back to the fund if the initial payments exceed
3 the actual expenditures. Money distributed from the fund to
4 the state fire marshal or the construction industries division
5 pursuant to this subsection shall be used to supplement, rather
6 than supplant, appropriations to those entities.

7 K. Pursuant to guidelines established by the
8 council, allocations from the fund may be made to assist school
9 districts in developing and updating five-year facilities plans
10 required by the Public School Capital Outlay Act; provided
11 that:

12 (1) no allocation shall be made unless the
13 council determines that the school district is willing and able
14 to pay the portion of the total cost of developing or updating
15 the plan that is not funded with the allocation from the fund.
16 Except as provided in Paragraph (2) of this subsection, the
17 portion of the total cost to be paid with the allocation from
18 the fund shall be determined pursuant to the methodology in
19 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

20 (2) the allocation from the fund may be used
21 to pay the total cost of developing or updating the plan if:

22 (a) the school district has fewer than
23 an average of six hundred full-time-equivalent students on the
24 [~~eightieth and one hundred twentieth days~~] second and third
25 reporting dates of the prior school year; or

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1 (b) the school district meets all of the
2 following requirements: 1) the school district has fewer than
3 an average of one thousand full-time-equivalent students on the
4 [~~eightieth and one hundred twentieth days~~] second and third
5 reporting dates of the prior school year; 2) the school
6 district has at least seventy percent of its students eligible
7 for free or reduced-fee lunch; 3) the state share of the total
8 cost, if calculated pursuant to the methodology in Paragraph
9 (5) of Subsection B of Section 22-24-5 NMSA 1978, would be less
10 than fifty percent; and 4) for all educational purposes, the
11 school district has a residential property tax rate of at least
12 seven dollars (\$7.00) on each one thousand dollars (\$1,000) of
13 taxable value, as measured by the sum of all rates imposed by
14 resolution of the local school board plus rates set to pay
15 interest and principal on outstanding school district general
16 obligation bonds.

17 L. Upon application by a school district,
18 allocations from the fund may be made by the council for the
19 purpose of demolishing abandoned school district facilities;
20 provided that:

21 (1) the costs of continuing to insure an
22 abandoned facility outweigh any potential benefit when and if a
23 new facility is needed by the school district;

24 (2) there is no practical use for the
25 abandoned facility without the expenditure of substantial

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1 renovation costs; and

2 (3) the council may enter into an agreement
3 with the school district under which an amount equal to the
4 savings to the district in lower insurance premiums are used to
5 reimburse the fund fully or partially for the demolition costs
6 allocated to the district.

7 M. Up to ten million dollars (\$10,000,000) of the
8 fund may be expended each year in fiscal years 2014 through
9 2019 for an education technology infrastructure deficiency
10 corrections initiative pursuant to Section 22-24-4.5 NMSA 1978;
11 provided that funding allocated pursuant to this section shall
12 be expended within three years of its allocation.

13 N. For each fiscal year from 2018 through 2022,
14 twenty-five million dollars (\$25,000,000) of the public school
15 capital outlay fund is reserved for appropriation by the
16 legislature to the instructional material fund or to the
17 transportation distribution of the public school fund. The
18 secretary shall certify the need for the issuance of
19 supplemental severance tax bonds to meet an appropriation from
20 the public school capital outlay fund to the instructional
21 material fund or to the transportation distribution of the
22 public school fund. Any portion of an amount of the public
23 school capital outlay fund that is reserved for appropriation
24 by the legislature for a fiscal year, but that is not
25 appropriated before the first day of that fiscal year, may be

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1 expended by the council as provided in this section."

2 SECTION 4. Section 22-26A-3 NMSA 1978 (being Laws 2007,
3 Chapter 173, Section 3, as amended) is amended to read:

4 "22-26A-3. DEFINITIONS.--As used in the Public School
5 Lease Purchase Act:

6 A. "financing agreement" or "lease purchase
7 [~~arrangement~~] agreement" means an agreement for the leasing
8 of a building or other real property with an option to
9 purchase for a price that is reduced according to the
10 payments made, which periodic lease payments composed of
11 principal and interest components are to be paid to the
12 holder of the agreement and pursuant to which the owner of
13 the building or other real property may retain title to or a
14 security interest in the building or other real property and
15 may agree to release the security interest or transfer title
16 to the building or other real property to the school district
17 for nominal consideration after payment of the final periodic
18 lease payment; and

19 B. "governing body" means:

20 (1) the governing structure of a charter
21 school, as set forth in its approved charter; or

22 (2) a local school board as the governing
23 structure of a school district."

24 SECTION 5. Section 22-26A-4 NMSA 1978 (being Laws
25 2007, Chapter 173, Section 4, as amended) is amended to read:

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1 "22-26A-4. NOTICE OF PROPOSED LEASE PURCHASE

2 [~~ARRANGEMENT~~] AGREEMENT--APPROVAL OF DEPARTMENT.--

3 A. When a governing body determines, pursuant to
4 Subsection B of Section 22-26A-6 NMSA 1978, that a lease
5 purchase [~~arrangement~~] agreement is in the best interest of
6 the school district or the charter school, the governing body
7 shall forward to the department a copy of the proposed lease
8 purchase [~~arrangement~~] agreement and the source of funds that
9 the governing body has identified to make payments due under
10 the lease purchase [~~arrangement~~] agreement.

11 B. A governing body shall not enter into a lease
12 purchase [~~arrangement~~] agreement without the approval of the
13 department of the final lease purchase agreement."

14 SECTION 6. A new section of the Public School Lease
15 Purchase Act is enacted to read:

16 "[~~NEW MATERIAL~~] PROPOSED LEASE PURCHASE AGREEMENT
17 AMENDMENT--APPROVAL REQUIREMENT.--A governing body shall not
18 amend or otherwise change an executed lease purchase
19 agreement without the approval of the department of the final
20 amendment or change."

21 SECTION 7. Section 22-26A-5 NMSA 1978 (being Laws
22 2007, Chapter 173, Section 5, as amended) is amended to read:

23 "22-26A-5. LEASE PURCHASE [~~ARRANGEMENTS~~] AGREEMENTS--
24 TERMS.--Lease purchase [~~arrangements~~] agreements:

25 A. may have payments payable annually or more

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1 frequently as determined by the governing body;

2 B. may be subject to prepayment at the option of
3 the governing body at such time or times and upon such terms
4 and conditions with or without the payment of such premium or
5 premiums as determined by the governing body;

6 C. may have a final payment date not exceeding
7 thirty years after the date of execution;

8 D. may be acquired or executed at a public or
9 negotiated sale;

10 E. may be entered into between the governing body
11 and the owner of the building or other real property who may
12 be a trustee or other person that issues or sells
13 certificates of participation or other interests in the
14 payments to be made under the lease purchase [~~arrangement~~]
15 agreement, the proceeds of which may be used to acquire the
16 building or other real property;

17 F. shall specify the principal and interest
18 component of each payment made under the lease purchase
19 [~~arrangement~~] agreement; provided that the net effective
20 interest rate shall not exceed the maximum permitted by the
21 Public Securities Act; and provided further that the net
22 effective interest rate of a lease purchase agreement entered
23 into prior to July 1, 2017 shall not exceed fifty percent of
24 the maximum permitted by the Public Securities Act;

25 G. shall provide that, if the school district or

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1 charter school makes capital improvements to the building or
2 other real property, there shall be no change in the lease
3 payments or final payment without a written amendment
4 approved by the department;

5 H. shall provide that, if state, school district
6 or charter school funds, above those required for lease
7 payments, are used to construct or acquire improvements, the
8 cost of the improvements shall constitute a lien on the real
9 estate in favor of the school district or charter school and
10 then, if the lease purchase [~~arrangement~~] agreement is
11 terminated prior to the final payment and the release of the
12 security interest or the transfer of title at the option of
13 the school district or charter school:

14 (1) the school district or charter school
15 may foreclose on the real estate lien; or

16 (2) the current market value of the building
17 or other real property at the time of termination, as
18 determined by an independent appraisal certified by the
19 taxation and revenue department, in excess of the outstanding
20 principal due under the lease purchase [~~arrangement~~]
21 agreement shall be paid to the school district or charter
22 school;

23 I. shall provide that there is no legal
24 obligation for the school district or charter school to
25 continue the lease purchase [~~arrangement~~] agreement from year

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1 to year or to purchase the building or other real property;

2 J. shall provide that the lease purchase
3 [~~arrangement~~] agreement shall be terminated if sufficient
4 money is not available to meet any current lease payment;

5 K. shall provide that, with the prior approval of
6 the lessor, which shall not be unreasonably withheld, the
7 lease purchase [~~arrangement~~] agreement is assignable, without
8 cost to the school district, or charter school and with all
9 of the rights and benefits of its predecessor in interest
10 being transferred to the assignee, to:

11 (1) a school district or charter school; or

12 (2) the state or one of its institutions,
13 instrumentalities or other political subdivisions; and

14 L. shall provide that amendments to the lease
15 purchase [~~arrangement~~] agreement, except amendments that
16 would improve the building or other real property without
17 additional financial obligations to the school district or
18 charter school, shall be approved by the department."

19 **SECTION 8.** Section 22-26A-5.1 NMSA 1978 (being Laws
20 2009, Chapter 132, Section 5) is amended to read:

21 "22-26A-5.1. TRANSFER OR ASSIGNMENT OF LEASE PURCHASE
22 [~~ARRANGEMENT~~] AGREEMENT--DESIGNATION AS PUBLIC PROPERTY.--

23 A. A holder of a lease purchase [~~arrangement~~]
24 agreement, including any public entity holding a lease
25 purchase [~~arrangement~~] agreement, may secure financing by

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1 issuing certificates of participation or otherwise assigning
2 or transferring all or a portion of the lease purchase
3 [~~arrangement~~] agreement.

4 B. A building or other real property subject to a
5 lease purchase [~~arrangement~~] agreement that has been entered
6 into and approved pursuant to the Public School Lease
7 Purchase Act shall be considered to be a public property."

8 SECTION 9. Section 22-26A-6 NMSA 1978 (being Laws
9 2007, Chapter 173, Section 6, as amended) is amended to read:

10 "22-26A-6. AUTHORIZING LEASE PURCHASE [~~ARRANGEMENTS~~]
11 AGREEMENTS--RESOLUTION.--

12 A. If a governing body proposes to acquire a
13 building or other real property through a lease purchase
14 [~~arrangement~~] agreement, it shall comply with the
15 requirements of this section and the provisions of the Open
16 Meetings Act.

17 B. At a regular meeting or at a special meeting
18 called for the purpose of considering the acquisition of a
19 building or other real property through a lease purchase
20 [~~arrangement~~] agreement, a governing body shall:

21 (1) make a determination of the necessity
22 for acquiring the building or other real property through a
23 lease purchase [~~arrangement~~] agreement;

24 (2) determine the estimated cost of the
25 buildings or other real property needed;

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- 1 (3) review a summary of the terms of the
- 2 proposed lease purchase [~~arrangement~~] agreement;
- 3 (4) identify the source of funds for the
- 4 lease purchase payments;
- 5 (5) if obtaining all or part of the funds
- 6 needed requires or anticipates the imposition of a property
- 7 tax, determine the estimated rate of the tax and what, if
- 8 any, the percentage increase in property taxes will be for
- 9 real property owners in the school district; and
- 10 (6) if the governing body determines that
- 11 the lease purchase [~~arrangement~~] agreement is in the best
- 12 interest of the school district or charter school, forward a
- 13 copy of the [~~arrangement~~] agreement to the department
- 14 pursuant to Section 22-26A-4 NMSA 1978.

15 C. After receiving department approval of the

16 lease purchase [~~arrangement~~] agreement, the governing body

17 may adopt a final resolution approving the lease purchase of

18 the building or other real property; provided that the lease

19 purchase agreement is not modified after the governing body

20 receives department approval.

21 D. If a local school board finds that obtaining

22 all or part of the funds needed for a lease purchase

23 [~~arrangement~~] agreement requires the imposition of a property

24 tax, the board may adopt a resolution to be presented to the

25 voters pursuant to Section 22-26A-8 NMSA 1978.

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1 E. If the governing body of a charter school
2 finds that obtaining all or part of the necessary funds
3 requires the imposition of a property tax, the local school
4 board of the school district in which the charter school is
5 located may adopt a resolution to be presented to the voters,
6 pursuant to Section 22-26A-8 NMSA 1978; provided that the
7 governing body of the charter school has notified the local
8 school board that the charter school has been approved to
9 enter into a lease purchase [~~arrangement~~] agreement and has
10 identified revenue from the proposed tax as a necessary
11 source of funds. The local school board:

12 (1) shall include the tax revenue needed by
13 the charter school in the resolution if the school's charter
14 has been renewed at least once; and

15 (2) may include the tax revenue needed by
16 the charter school in the resolution if the charter school is
17 a locally chartered charter school prior to its first renewal
18 term.

19 F. If a local school board adopts a resolution
20 that includes tax revenue for a charter school, and, if the
21 tax is approved in an election pursuant to Sections 22-26A-8
22 through 22-26A-12 NMSA 1978, the local school board shall
23 distribute an amount of the tax revenue, as established in
24 its resolution, to the charter school to be used in the lease
25 purchase [~~arrangement~~] agreement.

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1 G. The local school board shall not adopt a
2 resolution for or approve a lease purchase [~~arrangement~~
3 agreement for a term that exceeds thirty years."

4 **SECTION 10.** Section 22-26A-7 NMSA 1978 (being Laws
5 2007, Chapter 173, Section 7, as amended) is amended to read:

6 "22-26A-7. PAYMENTS UNDER LEASE PURCHASE
7 [~~ARRANGEMENTS~~] AGREEMENTS.--A school district or charter
8 school may apply any legally available funds to acquire or
9 improve buildings or other real property subject to a lease
10 purchase [~~arrangement~~] agreement or to the payments due under
11 a lease purchase [~~arrangement~~] agreement, including any
12 combination of:

13 A. money from the school district's or charter
14 school's general fund;

15 B. investment income actually received from
16 investments;

17 C. proceeds from taxes imposed pursuant to the
18 Public School Capital Improvements Act or the Public School
19 Buildings Act;

20 D. loans, grants or lease payments received from
21 the public school capital outlay council pursuant to the
22 Public School Capital Outlay Act;

23 E. state distributions to the school district or
24 charter school pursuant to the Public School Capital
25 Improvements Act;

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- 1 F. fees or assessments received by the school
- 2 district;
- 3 G. proceeds from the sale of real property and
- 4 rental income received from the rental or leasing of school
- 5 district or charter school property;
- 6 H. grants from the federal government as
- 7 assistance to those areas affected by federal activity
- 8 authorized in accordance with Title 20 of the United States
- 9 Code, commonly known as "PL 874 funds" or "impact aid";
- 10 I. revenues from the tax authorized pursuant to
- 11 Sections 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by
- 12 the local school board and approved by the voters; and
- 13 J. legislative appropriations."

14 SECTION 11. Section 22-26A-8 NMSA 1978 (being Laws
15 2007, Chapter 173, Section 8, as amended) is amended to read:

16 "22-26A-8. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO
17 SUBMIT QUESTION OF LEASE PURCHASE TAX.--A local school board
18 may adopt a resolution to submit to the qualified electors of
19 the school district the question of whether a property tax at
20 a rate not to exceed the rate specified in the resolution
21 should be imposed upon the net taxable value of property
22 allocated to the school district under the Property Tax Code
23 for the purpose of making payments under lease purchase
24 [~~arrangements~~] agreements. The resolution shall:

- 25 A. specify the maximum rate of the proposed tax,

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1 which shall not exceed ten dollars (\$10.00) on each one
2 thousand dollars (\$1,000) of net taxable value of property
3 allocated to the school district under the Property Tax Code;

4 B. specify the date an election will be held to
5 submit the question of imposition of the tax to the qualified
6 electors of the district; and

7 C. limit the imposition of the proposed tax to no
8 more than thirty property tax years."

9 SECTION 12. Section 22-26A-9 NMSA 1978 (being Laws
10 2007, Chapter 173, Section 9) is amended to read:

11 "22-26A-9. AUTHORIZING RESOLUTION--TIME LIMITATION.--
12 The resolution authorized under Section [~~8 of the Public~~
13 ~~School Lease Purchase Act~~] 22-26A-8 NMSA 1978 shall be
14 adopted no later than May 15 in the year in which the tax is
15 proposed to be imposed."

16 SECTION 13. Section 22-26A-10 NMSA 1978 (being Laws
17 2007, Chapter 173, Section 10, as amended) is amended to
18 read:

19 "22-26A-10. CONDUCT OF ELECTION--NOTICE--BALLOT.--

20 A. An election on the question of imposing a tax
21 under Sections 22-26A-8 through 22-26A-12 NMSA 1978 may be
22 held in conjunction with a regular school district election
23 or may be conducted as or held in conjunction with a special
24 school district election, but the election shall be held
25 prior to July 1 of the property tax year in which the tax is

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1 proposed to be imposed. Conduct of the election shall be as
2 prescribed in the School Election Law for regular and special
3 school district elections.

4 B. The resolution required to be published as
5 notice of the election under Section 1-22-4 or 1-22-5 NMSA
6 1978 shall include as the question to be submitted to the
7 voters whether a property tax at a rate not to exceed the
8 rate specified in the authorizing resolution should be
9 imposed for the specified number of property tax years not
10 exceeding thirty years upon the net taxable value of all
11 property allocated to the school district for payments due
12 under lease purchase [~~arrangements~~] agreements.

13 C. The ballot shall include the information
14 specified in Subsection B of this section and shall present
15 the voter the choice of voting "for the lease purchase tax"
16 or "against the lease purchase tax".

17 **SECTION 14.** Section 22-26A-12 NMSA 1978 (being Laws
18 2007, Chapter 173, Section 12, as amended) is amended to
19 read:

20 "22-26A-12. IMPOSITION OF TAX--LIMITATIONS.--If as a
21 result of an election held in accordance with Sections
22 22-26A-8 through 22-26A-11 NMSA 1978 a majority of the
23 qualified electors voting on the question votes in favor of
24 the imposition of the tax, the tax rate shall be certified,
25 unless the local school board directs that the tax levy not

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1 be made for the year, by the department of finance and
2 administration at the rate specified in the authorizing
3 resolution or at a lower rate directed by the local school
4 board and the tax shall be imposed at the rate certified in
5 accordance with the provisions of the Property Tax Code. The
6 revenue produced by the tax shall be expended only for
7 payments due under lease purchase [~~arrangements~~] agreements,
8 as specified in the authorizing resolution."

9 SECTION 15. Section 22-26A-13 NMSA 1978 (being Laws
10 2007, Chapter 173, Section 13, as amended) is amended to
11 read:

12 "22-26A-13. PUBLICATION OF NOTICE--VALIDATION.--

13 A. After adoption of a resolution approving a
14 lease purchase [~~arrangement~~] agreement, the governing body
15 shall publish notice of the adoption of the resolution once
16 in a newspaper of general circulation in the school district
17 in which the governing body's school is located.

18 B. After the passage of thirty days from the
19 publication required by Subsection A of this section, any
20 action attacking the validity of the proceedings taken by the
21 governing body preliminary to and in the authorization of and
22 entering into the lease purchase [~~arrangement~~] agreement
23 described in the notice is perpetually barred."

24 SECTION 16. Section 22-26A-14 NMSA 1978 (being Laws
25 2007, Chapter 173, Section 14, as amended) is amended to

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1 read:

2 "22-26A-14. REFUNDING OR REFINANCING LEASE PURCHASE
3 [~~ARRANGEMENTS~~] AGREEMENTS.--School districts and charter
4 schools may enter into lease purchase [~~arrangements~~]
5 agreements for the purpose of refunding or refinancing any
6 lease purchase [~~arrangements~~] agreements then outstanding,
7 including the payment of any prepayment premiums thereon and
8 any interest accrued or to accrue to the date of prepayment
9 maturity of the outstanding lease purchase [~~arrangements~~]
10 agreements. Until the proceeds of the lease purchase
11 [~~arrangements~~] agreements issued for the purpose of refunding
12 or refinancing outstanding lease purchase [~~arrangements~~]
13 agreements are applied to the prepayment or retirement of the
14 outstanding lease purchase [~~arrangements~~] agreements, the
15 proceeds may be placed in escrow and invested and reinvested.
16 The interest, income and profits, if any, earned or realized
17 on any such investment may, in the discretion of the
18 governing body, also be applied to the payment of the
19 outstanding lease purchase [~~arrangements~~] agreements to be
20 refunded or refinanced by prepayment or retirement, as the
21 case may be. After the terms of the escrow have been fully
22 satisfied and carried out, any balance of such proceeds and
23 interest, if any, earned or realized on the investments
24 thereof may be returned to the governing body to be used for
25 payment of the refunding or refinancing lease purchase

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1 [arrangement] agreement. If the proceeds from a tax imposed
2 pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978
3 were used as a source of payments for the refunded lease
4 purchase [arrangement] agreement, the proceeds may continue
5 to be used for the refunding or refinancing lease purchase
6 [arrangements] agreements without the requirement of an
7 additional election on the issue."

8 SECTION 17. Section 22-26A-15 NMSA 1978 (being Laws
9 2007, Chapter 173, Section 15, as amended) is amended to
10 read:

11 "22-26A-15. AGREEMENT OF THE STATE.--The state does
12 hereby pledge to and agree with the holders of any lease
13 purchase [arrangement] agreement, certificates of
14 participation or other partial interest in a lease purchase
15 [arrangement] agreement entered into under the Public School
16 Lease Purchase Act that the state will not limit or alter the
17 rights vested in school districts or charter schools to
18 fulfill the terms of any lease purchase [arrangement]
19 agreement or related sublease [arrangement] agreement or in
20 any way impair the rights and remedies of the holders of
21 lease purchase [arrangements] agreements, certificates of
22 participation or other partial interests in lease purchase
23 [arrangements] agreements until the payments due thereon, and
24 all costs and expenses in connection with any action or
25 proceedings by or on behalf of those holders, are fully met

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1 and discharged. School districts and charter schools are
2 authorized to include this pledge and agreement of the state
3 in any lease purchase [~~arrangement~~] agreement or related
4 sublease [~~arrangement~~] agreement."

5 SECTION 18. Section 22-26A-16 NMSA 1978 (being Laws
6 2007, Chapter 173, Section 16, as amended) is amended to
7 read:

8 "22-26A-16. LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND
9 FIDUCIARIES.--Lease purchase [~~arrangements~~] agreements
10 entered into under the authority of the Public School Lease
11 Purchase Act, including certificates of participation and
12 other partial interests in such lease purchase [~~arrangements~~]
13 agreements, shall be legal investments in which all insurance
14 companies, banks and savings and loan associations organized
15 under the laws of the state, public officers and public
16 bodies and all administrators, guardians, executors, trustees
17 and other fiduciaries may properly and legally invest funds."

18 SECTION 19. Section 22-26A-17 NMSA 1978 (being Laws
19 2007, Chapter 173, Section 17, as amended) is amended to
20 read:

21 "22-26A-17. TAX EXEMPTION.--The state covenants with
22 the original holder and all subsequent holders and
23 transferees of lease purchase [~~arrangements~~] agreements
24 entered into by governing bodies, in consideration of the
25 acceptance of and payment for the lease purchase

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